

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHELE BARNETT
25641 White Sands Street
Dana Point, CA 92629

Registered Nurse License No. 273845

Respondent

Case No. 2013-376

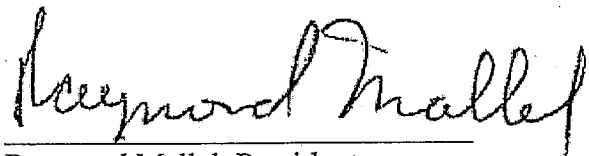
OAH No. 2012120216

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **May 10, 2013.**

IT IS SO ORDERED **April 10, 2013.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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Attorneys for Complainant

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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **MICHELE BARNETT**
25641 White Sands St.
13 Dana Point, CA 92629

14 **Registered Nurse License No. 273845**

15 Respondent.

Case No. 2013 376

OAH No. 2012120216

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16
17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the Board of Registered Nursing of the Department of Consumer
19 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
20 which will be submitted to the Board for approval and adoption as the final disposition of the
21 Accusation.

22 **PARTIES**

23 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
24 Registered Nursing. She brought this action solely in her official capacity and is represented in
25 this matter by Kamala D. Harris, Attorney General of the State of California, by Marichelle S.
26 Tahimic, Deputy Attorney General.

27 2. Respondent Michele Barnett (Respondent) is representing herself in this proceeding
28 and has chosen not to exercise her right to be represented by counsel.

3. On or about December 31, 1976, the Board of Registered Nursing issued Registered Nurse License No. 273845 to Michele Barnett (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2013 376 and will expire on September 30, 2014, unless renewed.

JURISDICTION

4. Accusation No. 2013 376 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 6, 2012. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 2013 376 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2013 376. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 2013 376.

/ / /

10. Respondent agrees that her Registered Nurse License is subject to discipline and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile and/or electronic copies of this Stipulated Settlement and Disciplinary Order, including facsimile and/or electronic signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

Upon successful completion of probation, Respondent's license shall be fully restored.

4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or

1 practice as a registered nurse outside of California shall not apply toward a reduction of this
2 probation time period. Respondent's probation is tolled, if and when she resides outside of
3 California. Respondent must provide written notice to the Board within 15 days of any change of
4 residency or practice outside the state, and within 30 days prior to re-establishing residency or
5 returning to practice in this state.

6 Respondent shall provide a list of all states and territories where she has ever been licensed
7 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
8 information regarding the status of each license and any changes in such license status during the
9 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
10 license during the term of probation.

11 **5. Submit Written Reports.** Respondent, during the period of probation, shall submit
12 or cause to be submitted such written reports/declarations and verification of actions under
13 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
14 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
15 Respondent shall immediately execute all release of information forms as may be required by the
16 Board or its representatives.

17 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
18 state and territory in which she has a registered nurse license.

19 **6. Function as a Registered Nurse.** Respondent, during the period of probation, shall
20 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
21 6 consecutive months or as determined by the Board.

22 For purposes of compliance with the section, "engage in the practice of registered nursing"
23 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
24 non-direct patient care position that requires licensure as a registered nurse.

25 The Board may require that advanced practice nurses engage in advanced practice nursing
26 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

27 If Respondent has not complied with this condition during the probationary term, and
28 Respondent has presented sufficient documentation of her good faith efforts to comply with this

1 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
2 extension of Respondent's probation period up to one year without further hearing in order to
3 comply with this condition. During the one year extension, all original conditions of probation
4 shall apply.

5 7. **Employment Approval and Reporting Requirements.** Respondent shall obtain
6 prior approval from the Board before commencing or continuing any employment, paid or
7 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
8 performance evaluations and other employment related reports as a registered nurse upon request
9 of the Board.

10 Respondent shall provide a copy of this Decision to her employer and immediate
11 supervisors prior to commencement of any nursing or other health care related employment.

12 In addition to the above, Respondent shall notify the Board in writing within seventy-two
13 (72) hours after she obtains any nursing or other health care related employment. Respondent
14 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
15 separated, regardless of cause, from any nursing, or other health care related employment with a
16 full explanation of the circumstances surrounding the termination or separation.

17 8. **Supervision.** Respondent shall obtain prior approval from the Board regarding
18 Respondent's level of supervision and/or collaboration before commencing or continuing any
19 employment as a registered nurse, or education and training that includes patient care.

20 Respondent shall practice only under the direct supervision of a registered nurse in good
21 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
22 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
23 approved.

24 Respondent's level of supervision and/or collaboration may include, but is not limited to the
25 following:

26 (a) Maximum - The individual providing supervision and/or collaboration is present in
27 the patient care area or in any other work setting at all times.

28 (b) Moderate - The individual providing supervision and/or collaboration is in the patient

1 care unit or in any other work setting at least half the hours Respondent works.

2 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
3 person communication with Respondent at least twice during each shift worked.

4 (d) Home Health Care - If Respondent is approved to work in the home health care
5 setting, the individual providing supervision and/or collaboration shall have person-to-person
6 communication with Respondent as required by the Board each work day. Respondent shall
7 maintain telephone or other telecommunication contact with the individual providing supervision
8 and/or collaboration as required by the Board during each work day. The individual providing
9 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
10 patients' homes visited by Respondent with or without Respondent present.

11 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any
12 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
13 or for an in-house nursing pool.

14 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
15 registered nursing supervision and other protections for home visits have been approved by the
16 Board. Respondent shall not work in any other registered nursing occupation where home visits
17 are required.

18 Respondent shall not work in any health care setting as a supervisor of registered nurses.
19 The Board may additionally restrict Respondent from supervising licensed vocational nurses
20 and/or unlicensed assistive personnel on a case-by-case basis.

21 Respondent shall not work as a faculty member in an approved school of nursing or as an
22 instructor in a Board approved continuing education program.

23 Respondent shall work only on a regularly assigned, identified and predetermined
24 worksite(s) and shall not work in a float capacity.

25 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
26 request documentation to determine whether there should be restrictions on the hours of work.

27 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
28 successfully complete a course(s) relevant to the practice of registered nursing no later than six

1 months prior to the end of her probationary term.

2 Respondent shall obtain prior approval from the Board before enrolling in the course(s).

3 Respondent shall submit to the Board the original transcripts or certificates of completion for the
4 above required course(s). The Board shall return the original documents to Respondent after
5 photocopying them for its records.

6 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its
7 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
8 amount of \$2,057.50. Respondent shall be permitted to pay these costs in a payment plan
9 approved by the Board, with payments to be completed no later than three months prior to the end
10 of the probation term.

11 If Respondent has not complied with this condition during the probationary term, and
12 Respondent has presented sufficient documentation of her good faith efforts to comply with this
13 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
14 extension of Respondent's probation period up to one year without further hearing in order to
15 comply with this condition. During the one year extension, all original conditions of probation
16 will apply.

17 12. **Violation of Probation.** If Respondent violates the conditions of her probation, the
18 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
19 and impose the stayed discipline (revocation/suspension) of Respondent's license.

20 If during the period of probation, an accusation or petition to revoke probation has been
21 filed against Respondent's license or the Attorney General's Office has been requested to prepare
22 an accusation or petition to revoke probation against Respondent's license, the probationary
23 period shall automatically be extended and shall not expire until the accusation or petition has
24 been acted upon by the Board.

25 13. **License Surrender.** During Respondent's term of probation, if she ceases practicing
26 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
27 Respondent may surrender her license to the Board. The Board reserves the right to evaluate
28 Respondent's request and to exercise its discretion whether to grant the request, or to take any

1 other action deemed appropriate and reasonable under the circumstances, without further hearing.
2 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
3 subject to the conditions of probation.

4 Surrender of Respondent's license shall be considered a disciplinary action and shall
5 become a part of Respondent's license history with the Board. A registered nurse whose license
6 has been surrendered may petition the Board for reinstatement no sooner than the following
7 minimum periods from the effective date of the disciplinary decision:

8 (1) Two years for reinstatement of a license that was surrendered for any reason other
9 than a mental or physical illness; or

10 (2) One year for a license surrendered for a mental or physical illness.

11 14. **Physical Examination.** Within 45 days of the effective date of this Decision,
12 Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician
13 assistant, who is approved by the Board before the assessment is performed, submit an
14 assessment of the Respondent's physical condition and capability to perform the duties of a
15 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
16 medically determined, a recommended treatment program will be instituted and followed by the
17 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
18 to the Board on forms provided by the Board.

19 If Respondent is determined to be unable to practice safely as a registered nurse, the
20 licensed physician, nurse practitioner, or physician assistant making this determination shall
21 immediately notify the Board and Respondent by telephone, and the Board shall request that the
22 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
23 immediately cease practice and shall not resume practice until notified by the Board. During this
24 period of suspension, Respondent shall not engage in any practice for which a license issued by
25 the Board is required until the Board has notified Respondent that a medical determination
26 permits Respondent to resume practice. This period of suspension will not apply to the reduction
27 of this probationary time period.

28 If Respondent fails to have the above assessment submitted to the Board within the 45-day

1 requirement, Respondent shall immediately cease practice and shall not resume practice until
2 notified by the Board. This period of suspension will not apply to the reduction of this
3 probationary time period. The Board may waive or postpone this suspension only if significant,
4 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
5 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
6 Only one such waiver or extension may be permitted.

7 **15. Participate in Treatment/Rehabilitation Program for Chemical Dependence.**

8 Respondent, at her expense, shall successfully complete during the probationary period or shall
9 have successfully completed prior to commencement of probation a Board-approved
10 treatment/rehabilitation program of at least six months duration. As required, reports shall be
11 submitted by the program on forms provided by the Board. If Respondent has not completed a
12 Board-approved treatment/rehabilitation program prior to commencement of probation,
13 Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program.
14 If a program is not successfully completed within the first nine months of probation, the Board
15 shall consider Respondent in violation of probation.

16 Based on Board recommendation, each week Respondent shall be required to attend at least
17 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
18 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.
19 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be
20 added. Respondent shall submit dated and signed documentation confirming such attendance to
21 the Board during the entire period of probation. Respondent shall continue with the recovery plan
22 recommended by the treatment/rehabilitation program or a licensed mental health examiner
23 and/or other ongoing recovery groups.

24 **16. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall
25 completely abstain from the possession, injection or consumption by any route of all controlled
26 substances and all psychotropic (mood altering) drugs, including alcohol, except when the same
27 are ordered by a health care professional legally authorized to do so as part of documented
28 medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14)

1 days, by the prescribing health professional, a report identifying the medication, dosage, the date
2 the medication was prescribed, the Respondent's prognosis, the date the medication will no
3 longer be required, and the effect on the recovery plan, if appropriate.

4 Respondent shall identify for the Board a single physician, nurse practitioner or physician
5 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
6 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
7 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
8 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
9 considered addictive have been prescribed, the report shall identify a program for the time limited
10 use of any such substances.

11 The Board may require the single coordinating physician, nurse practitioner, or physician
12 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
13 medicine.

14 17. **Submit to Tests and Samples.** Respondent, at her expense, shall participate in a
15 random, biological fluid testing or a drug screening program which the Board approves. The
16 length of time and frequency will be subject to approval by the Board. Respondent is responsible
17 for keeping the Board informed of Respondent's current telephone number at all times.
18 Respondent shall also ensure that messages may be left at the telephone number when she is not
19 available and ensure that reports are submitted directly by the testing agency to the Board, as
20 directed. Any confirmed positive finding shall be reported immediately to the Board by the
21 program and Respondent shall be considered in violation of probation.

22 In addition, Respondent, at any time during the period of probation, shall fully cooperate
23 with the Board or any of its representatives, and shall, when requested, submit to such tests and
24 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
25 hypnotics, dangerous drugs, or other controlled substances.

26 If Respondent has a positive drug screen for any substance not legally authorized and not
27 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
28 files a petition to revoke probation or an accusation, the Board may suspend Respondent from

1 practice pending the final decision on the petition to revoke probation or the accusation. This
2 period of suspension will not apply to the reduction of this probationary time period.

3 ~~If Respondent fails to participate in a random, biological fluid testing or drug screening~~
4 ~~program within the specified time frame, Respondent shall immediately cease practice and shall~~
5 ~~not resume practice until notified by the Board. After taking into account documented evidence~~
6 ~~of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may~~
7 ~~suspend Respondent from practice pending the final decision on the petition to revoke probation~~
8 ~~or the accusation. This period of suspension will not apply to the reduction of this probationary~~
9 ~~time period.~~

10 **18. Mental Health Examination.** Respondent shall, within 45 days of the effective date
11 of this Decision, have a mental health examination including psychological testing as appropriate
12 to determine her capability to perform the duties of a registered nurse. The examination will be
13 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by
14 the Board. The examining mental health practitioner will submit a written report of that
15 assessment and recommendations to the Board. All costs are the responsibility of Respondent.
16 Recommendations for treatment, therapy or counseling made as a result of the mental health
17 examination will be instituted and followed by Respondent.

18 If Respondent is determined to be unable to practice safely as a registered nurse, the
19 licensed mental health care practitioner making this determination shall immediately notify the
20 Board and Respondent by telephone, and the Board shall request that the Attorney General's
21 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
22 practice and may not resume practice until notified by the Board. During this period of
23 suspension, Respondent shall not engage in any practice for which a license issued by the Board
24 is required, until the Board has notified Respondent that a mental health determination permits
25 Respondent to resume practice. This period of suspension will not apply to the reduction of this
26 probationary time period.

27 If Respondent fails to have the above assessment submitted to the Board within the 45-day
28 requirement, Respondent shall immediately cease practice and shall not resume practice until

1 notified by the Board. This period of suspension will not apply to the reduction of this
2 probationary time period. The Board may waive or postpone this suspension only if significant,
3 documented evidence of mitigation is provided. Such evidence must establish good-faith efforts
4 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
5 Only one such waiver or extension may be permitted.

6 19. **Therapy or Counseling Program.** Respondent, at her expense, shall participate in
7 an on-going counseling program until such time as the Board releases her from this requirement
8 and only upon the recommendation of the counselor. Written progress reports from the counselor
9 will be required at various intervals.

10 ACCEPTANCE

11 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
12 stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated
13 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
14 bound by the Decision and Order of the Board of Registered Nursing.

15 DATED:

1/21/2013

Michele Barnett

16 MICHELE BARNETT
17 Respondent

18 ENDORSEMENT

19 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
20 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
21 Affairs.

22 Dated:

Feb. 4, 2013

Respectfully submitted,

23 KAMALA D. HARRIS
24 Attorney General of California
25 JAMES M. LEDAKIS
26 Supervising Deputy Attorney General

Marichelle S. Tahmic

27 MARICHELE S. TAHMIC
28 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2013 376

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 MARICHELLE S. TAHIMIC
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

Case No. *2013-376*

12 **MICHELE BARNETT**
25641 White Sands Street
13 Dana Point, CA 92629

A C C U S A T I O N

14 **Registered Nurse License No. 273845**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about December 31, 1976, the Board of Registered Nursing issued Registered
23 Nurse License Number 273845 to Michele Barnett (Respondent). The Registered Nurse License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 September 30, 2014, unless renewed.

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1 (c) Be convicted of a criminal offense involving the prescription,
2 consumption, or self-administration of any of the substances described in
3 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
4 record pertaining to, the substances described in subdivision (a) of this section,
5 in which event the record of the conviction is conclusive evidence thereof....

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11 8. Section 2765 of the Code states:

12 A plea or verdict of guilty or a conviction following a plea of nolo
13 contendere made to a charge substantially related to the qualifications,
14 functions and duties of a registered nurse is deemed to be a conviction within
15 the meaning of this article. The board may order the license or certificate
16 suspended or revoked, or may decline to issue a license or certificate, when the
17 time for appeal has elapsed, or the judgment of conviction has been affirmed on
18 appeal or when an order granting probation is made suspending the imposition
19 of sentence, irrespective of a subsequent order under the provisions of Section
20 1203.4 of the Penal Code allowing such person to withdraw his or her plea of
21 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
22 dismissing the accusation, information or indictment.

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28 9. Section 2770.11 of the Code states:

(a) Each registered nurse who requests participation in a diversion
program shall agree to cooperate with the rehabilitation program designed by
the committee and approved by the program manager. Any failure to comply
with the provisions of rehabilitation program may result in termination of the
registered nurse's participation in a program. The name and license number of
a registered nurse who is terminated for any reason, other than successful
completion, shall be reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is
denied admission into the program or terminated from the program, presents a
threat to the public or his or her own health and safety, the program manager
shall report the name and license number, along with a copy of all diversion
records for that registered nurse, to the board's enforcement program. The
board may use any of the records it receives under this subdivision in any
disciplinary proceeding.

10. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to
evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of
rehabilitation furnished by the applicant or licensee."

11. Section 490 of the Code provides, in pertinent part, that a board may suspend or
revoke a license on the ground that the licensee has been convicted of a crime substantially

related to the qualifications, functions, or duties of the business or profession for which the license was issued.

12. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

13. Title 16, California Code of Regulations, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

14. Title 16, California Code of Regulations, section 1445, states in part:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the

licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee

COST RECOVERY

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

16. Soma, a brand name for carisoprodol, is a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d)(18), containing the depressant, Meprobamate, and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(August 25, 2003 Conviction of DUI on April 10, 2003)

17. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), for conviction of a crime that is substantially related to the qualifications, functions and duties of a registered nurse in that on August 25, 2003, in *The People of the State of California v. Michele Barnett*, San Diego Superior Court Case No. M896841, Respondent was convicted on her guilty plea of driving under the influence of drugs on April 10, 2003, in violation of Vehicle Code section 23152 (a).

18. As a result of the conviction, Respondent was sentenced to 180 days in jail, placed on probation for 5 years, ordered to pay \$1,423 in fines and fees, ordered to attend and complete a First Offender Program and MADD program.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Use of Drugs to an Extent Dangerous to Herself or the Public on April 10, 2003)

19. Respondent is subject to disciplinary action under Code section 2762, subdivision (b), for using drugs to an extent or in a manner that was dangerous to herself or the public in that on

1 April 10, 2003, Respondent drove a motor vehicle while under the influence of drugs, which
2 impaired her driving, as more fully set forth in paragraphs 17-18 above, and incorporated by this
3 reference as though set forth in full herein.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Conviction of Offense Involving**
6 **Consumption of Drugs on April 10, 2003)**

7 20. Respondent is subject to disciplinary action under Code section 2762, subdivision (c),
8 for conviction of a criminal offense involving the consumption or self-administration of drugs in
9 that on August 25, 2003, in *The People of the State of California v. Michele Barnett*, San Diego
10 Superior Court Case No. M896841, Respondent was convicted on her guilty plea of driving under
11 the influence of drugs on April 10, 2003, in violation of Vehicle Code section 23152 (a), as more
12 fully set forth in paragraphs 17-18 above, and incorporated by this reference as though set forth in
13 full herein.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct - April 10, 2003)**

16 21. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
17 for unprofessional conduct in that she drove under the influence of drugs on April 10, 2003,
18 which impaired her driving, as more fully set forth in paragraphs 17-18 above, and incorporated
19 by this reference as though set forth in full herein.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(February 4, 2009 Conviction of Petty Theft on July 31, 2008)**

22 22. Respondent is subject to disciplinary action under Code sections 490 and 2761,
23 subdivision (f), in conjunction with section 2765, for conviction of a crime that is substantially
24 related to the qualifications, functions and duties of a registered nurse in that on February 4, 2009,
25 in *The People of the State of California v. Michele Barnett*, San Diego Superior Court Case No.
26 M058685, Respondent was convicted on her plea of nolo contendere to stealing on July 31, 2008,
27 in violation of Penal Code section 484/488. The circumstances of her conviction are as follows.
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1 23. At approximately 9:50 p.m. on July 31, 2008, Respondent was seen entering the
2 dressing room of Nordstrom Department Store in Horton Plaza in San Diego. Respondent brought
3 multiple items into the dressing room. R.V., a store employee, observed Respondent leave the
4 store without paying for any items. Upon leaving the store, Respondent was detained by R.V.
5 R.V. found three dresses in Respondent's purse that she had not paid for. Two of the dresses
6 were from the Nordstrom's in Horton Plaza and the other dress was from Nordstrom's in Mission
7 Viejo. Respondent was detained until the arrival of officers from the San Diego Police
8 Department.

9 24. After the police officers arrived, R.V. advised the officer that Respondent had a
10 current adult criminal trespass warning against her that Respondent signed on December 9, 2007.
11 As such, Respondent was not allowed into the store for two years from December 9, 2007.

12 25. When confronted by the police officers, Respondent admitted to stealing the two
13 dresses from Nordstrom's in Horton Plaza and admitted stealing the other dress from Nordstrom's
14 in Mission Viejo two weeks before.

15 26. As a result of Respondent's conviction, she was placed on probation for 3 years,
16 sentenced to jail for one day, ordered to 10 days of community service and ordered to pay fees
17 and fines of \$628.

18 27. On September 3, 2010, Respondent's plea of nolo contendere was withdrawn and the
19 criminal action dismissed pursuant to Penal Code sections 1203.4.

20 **SIXTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct – July 31, 2008)**

22 28. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
23 for unprofessional conduct in that on July 31, 2008, Respondent stole three dresses from
24 Nordstrom's, as more fully set forth in paragraphs 22-27 above, and incorporated by this
25 reference as though set forth in full herein.

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SEVENTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct – Use of Drugs to an Extent Dangerous
to Herself or the Public in July, 2012)**

29. Respondent is subject to disciplinary action under Code section 2762, subdivision (b), for using drugs to an extent or in a manner that was dangerous to herself or the public in that while enrolled in the Board's Diversion Program (MAXIMUS), Respondent tested positive for Soma on July 8, 2012, July 10, 2012, and July 11, 2012. Respondent was terminated from MAXIMUS on July 26, 2012 as a public safety risk. The circumstances are as follows.

30. Respondent first enrolled in the Board's Diversion Program (MAXIMUS) on or about March 5, 2009. She agreed to abstain from alcohol and all other mind-altering drugs, except as prescribed by a physician, and to notify MAXIMUS of any mind-altering drugs prescribed by a licensed health care provider. Respondent re-enrolled in the Board's diversion program since first enrolling in March, 2009. Respondent was cleared to provide patient care in July, 2011.

31. On February 12, 2012, Respondent signed the Diversion Program Recovery Terms and Conditions Agreement Effective January 26, 2012, wherein she again agreed to abide by the terms of the program, which included submitting to drug testing, abstaining from alcohol and all other mind-altering drugs, except as prescribed by a physician, and notifying MAXIMUS of any mind-altering drugs prescribed by a licensed health care provider, agreeing to abstain from the use of over-the-counter drugs and medications (except those on the approved list provided by MAXIMUS) and supplying MAXIMUS with documentation from a licensed health care provider regarding her diagnosis and treatment, as well as a copy of all prescriptions.

32. On July 8, 2012, Respondent's drug test was positive for Soma, Respondent's drug of choice. Respondent reported taking one Soma tablet during an Urgent Care visit for back and rib pain, however she did not notify her MAXIMUS Case Manager until she was called to test and realized the test would be positive. Respondent's drugs tests on July 10, 2012 and July 11, 2012 were also positive for Soma. Respondent did not provide MAXIMUS with a prescription for Soma before these drug tests. On July 20, 2012, Respondent admitted to having taken five, not one, Soma tablets. She also admitted that she obtained a prescription for Soma without

1 discussing it with her primary care provider or with her MAXIMUS Case Manager and that she
2 actively sought out her drug of choice during a Sunday evening visit to an Urgent Care.

3 Respondent was terminated from MAXIMUS on July 26, 2012.

4 **EIGHTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct)**

6 33. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
7 for unprofessional conduct in that Respondent sought out her drug of choice, Soma, from an
8 Urgent Care facility, and consumed the drugs, while participating in the Board's drug diversion
9 program, such that Respondent tested positive for Soma on July 8, 2012, July 10, 2012, and July
10 11, 2012, as more fully set forth in paragraphs 29-32 above and incorporated herein as though set
11 forth in full.

12 **DISCIPLINE CONSIDERATIONS**

13 34. To determine the degree of discipline, if any, to be imposed on Respondent,
14 Complainant alleges that on or about July 26, 2012, Respondent was terminated from the Board's
15 diversion program as a public safety risk as more fully set forth in paragraphs 29-32 above and
16 incorporated herein as though set forth in full.

17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Board of Registered Nursing issue a decision:

20 1. Revoking or suspending Registered Nurse License Number 273845, issued to
21 Michele Barnett;

22 2. Ordering Michele Barnett to pay the Board of Registered Nursing the reasonable
23 costs of the investigation and enforcement of this case, pursuant to Business and Professions
24 Code section 125.3; and,

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3. Taking such other and further action as deemed necessary and proper.

DATED: November 6, 2012 *for* *Louise Bailey*
LOUISE R. BAILEY, M.Ed., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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